

STATE OF MICHIGAN  
COURT OF APPEALS

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AUTO CLUB GROUP INSURANCE  
COMPANY,

UNPUBLISHED  
March 20, 2008

Plaintiff-Appellant/Cross-Appellee,

v

No. 272864  
Oakland Circuit Court  
LC No. 2005-069355-CK

AMANA APPLIANCES,

Defendant-Appellee/Cross-  
Appellant,

GOODMAN COMPANY, L.P., and GOODMAN  
MANUFACTURING COMPANY,  
L.P.,

Defendants.

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Before: Wilder, P.J., and Cavanagh and Fort Hood, JJ.

Wilder, P.J., (*concurring*).

I agree with the majority that Amana Appliances is entitled to summary disposition on both of Auto Club's claims. However, I write separately because I would hold that the economic loss doctrine applies to bar Auto Club's claims.

Under the economic loss doctrine, "where a purchaser's expectations in a sale are frustrated because the product he bought is not working properly, his remedy is said to be in contract alone, for he has suffered only 'economic' losses." *Sherman v Sea Ray Boats*, 251 Mich App 41, 44; 649 NW2d 783 (2002), quoting *Huron Tool & Engineering Co v Precision Consulting*, 209 Mich App 365, 368; 532 NW2d 541 (1995). Moreover, "where a plaintiff seeks damages for economic losses only . . . economic expectation issues prevail." *Sherman, supra* at 54.

It is clear that the economic loss doctrine applies in this case. Plaintiff's complaint alleges that because of the failure of a furnace door switch manufactured by defendant, plaintiff and plaintiff's insured's suffered economic damages resulting from broken plumbing, water damage and subsequent mold damage in plaintiff's insured's home that occurred when the furnace door switch failed. "Under the doctrine of subrogation, . . . [Auto Club] is entitled to be substituted in the place of and be vested with the rights of [its insureds] . . . ." *Tel-Twelve*

*Shopping Ctr v Sterling Garrett Constr Co*, 34 Mich App 434, 439; 191 NW2d 484 (1971), quoting *French v Grand Beach Co*, 239 Mich 575, 580; 215 NW 13 (1927). Because Auto Club's claim hinges on the allegation that the furnace door switch failed to work properly, and that property damage occurred as a result, any remedy against Amana would be in contract only.

Auto Club's attempts to assert negligence and breach of warranty claims against Amana when the economic loss doctrine applies to the facts of this case should be disregarded. Auto Club concedes that if the economic loss doctrine applies, the Uniform Commercial Code (or UCC) also applies to this case. It is undisputed that the UCC statute of limitations expired no later than July 1993. See MCL 440.2725 (the UCC statute of limitations is four years from accrual, accrual occurs at the time of the breach, and a breach of warranty occurs when tender of delivery is made). Because this case is properly treated as a breach of contract action under the UCC, Amana's motion for summary disposition pursuant to MCR 2.116(C)(7) should have been granted for failure of Auto Club to bring this action within the applicable statute of limitations.

/s/ Kurtis T. Wilder